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PRIMARY VS. REPRESENTATIVE GOVERNMENT

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The newer institutional forms of democracy—the referendum in its various forms, the initiative, proportional representation, the recall, popular election of United States senators, direct primaries for the nomination of candidates—all indicate the growing self-consciousness of the masses and the demand for a more direct participation in government than the pure representative system allows. Secretary Root's recent declaration that the

whole civilized world is swinging away from its old governmental moorings and entrusting the fate of its civilization to the capacity of the popular mass to govern¹

is a statement the truth of which needs no proof for its establishment. Still others whose opinions are entitled to consideration are telling us that

the representative system after a century of existence under a very extended suffrage has failed to satisfy the expectations of its early promoters and is likely to make way in its turn for the more direct action of the people on the most important questions of government.²

Certain it is that the character of representative government is undergoing fundamental changes not only through the operation of the forms of democracy mentioned above, but also through the new conception of the relation of the representative to his constituency. The earlier conception attributed to the representative full independence of judgment and action, the right to interpret the common need and the common consciousness free from duress either upon his intellect or his conscience. Edmund Burke expressed the old view when he declared that the representative owed his constituent both industry and judgment and when he sacrificed those to the opinion

¹ The *Outlook*, October 20, 1906, p. 409.

² Godkin, *Unforeseen Tendencies of Democracy*, p. 144. Substantially the same opinion is expressed by an editorial in the *Outlook* of December 8, 1906, p. 860.

of the constituent, he betrayed rather than served him. But the new view regards the representative in a very different light. He is no longer free to interpret and register the popular will as his conscience and better judgment dictate, but the general consciousness is interpreted for him and he is expected to obey the popular mandate.³

In determining the extent to which direct participation of the people in government is practicable or desirable, we must take into account their general intelligence, the character of the service which they are called upon to perform, and the resulting benefits considered from the standpoint both of administrative efficiency and social uplift. If the service consists merely in the selection of those public officials whose offices are political rather than administrative or judicial in character, there is a general concurrence of opinion that a wide popular participation may be safely permitted if the electorate possesses a fair degree of intelligence and virtue. This is so because no special knowledge derived from study, experience or discussion is required to perform the service intelligently and the resulting benefits to the electorate both through education and stimulation of interest in public affairs are of great importance. More important still such participation is necessary to preserve the popular character of the government and prevent it from becoming a bureaucracy.

With regard to popular election of administrative and judicial officers, however, there is no such concurrence of opinion. The result of the democratic movement in this country has been to sweep into its grasp judicial and administrative as well as political offices, until now, with remarkably few exceptions, they are filled by popular choice. In some States the number of elective offices has been multiplied to such an extent that elections have become almost a farce owing to the bewildering number of candidates from whom the voter must make his choice.⁴ A reduction of the number of elective officers

³ "The views of a constituency" says Burgess, "should always be taken into account as contributing to the make up of the consciousness of the State, but the will of a constituency has no place in the modern system of legislative representation." *Political Science and Constitutional Law*, vol. 2, p. 116.

⁴ An illustration of this fact was afforded by the election of November 6, 1906, in Chicago. Owing to the great number of offices to be filled at the election, a ballot nearly 2 feet square (26 by 19 in.) was required. There were seven party columns containing the names of 334 candidates. The *Chicago Record Herald* justly complained that there were no electors in Chicago who could vote such a ballot intelligently and urged that it should be simplified by a reduction in the number of elective offices. Horace E. Deming, Esq., in a recent address before

through the adoption of the appointive method for the filling of purely administrative positions would result not only in the selection of a better class of administrative officials, but through a simplification of the ballot, it would tend to elevate the character of the election and render less difficult the exercise of the voting privilege.⁵

If the service of the elector consists in passing judgment upon the merits of untried legislative or administrative projects (as opposed to concrete results already attained), a higher degree of intelligence is, of course required, in the absence of which there must be a loss of efficiency, though the moral and educational benefits to the electorate on account of being permitted to share in the service may outweigh the disadvantage. If governmental efficiency were the only consideration, government by a benevolent despot or by a small body of trained bureaucrats free from popular control would possess obvious advantages over democratic government which, as Sir Henry Maine has observed, is the most difficult of all forms.⁶ But it must not be lost

the National Municipal League entered a protest against the useless multiplication of elective offices. He described the ballot used in a recent election in New Jersey as being 2 feet and 8 inches long and containing the names of 164 candidates. He showed how the ballot used could have been simplified by the elimination of at least three-fourths of the names, leaving a small ballot with a dozen or more names. Making so many offices elective, he declared, "confuses the voter as to the real political results, gives abundant opportunity for and, indeed, necessitates slates and combinations, cumbers the electoral machinery adds to the expense, and increases the complexity of campaigns," and at this particular primary, required the printing of 74 names to be passed upon by every voter. The result was that the voter was "hopelessly entangled in the intentional absurdities of the ballot and hence unable to exercise an intelligent and discriminating choice and to make his choice effectual." Proceedings of the National Municipal League for 1906, p. 312.

⁵ It is a subject of growing complaint that elections are coming to be too complex for the average voter to exercise his privilege intelligently. The *New York Nation* complaining of this tendency, recently declared that for weeks before the election of November, 1905, the newspapers were turned into primers of instruction for the voters. The spectacle of "educated New Yorkers annually learning how to vote" has come to be one of the regular features of political life in the metropolis. In the election referred to above 13,000 votes were cast for Jerome's republican opponent, although the latter had withdrawn from the race. These votes would doubtless have been cast for Jerome but for the fact that the ballot was very complicated and there was fear that the attempt to vote a split ticket would result in the spoiling of the ballot. Accordingly the electors, voted the straight ticket in order to be sure that their ballot would be counted.

⁶ "Of all the forms of government, democracy is the most difficult. Little as the governing multitude is conscious of this difficulty, prone as the masses are to

sight of that governmental efficiency is only one and some writers maintain, the least important end of an administrative system. Professor Goodnow, goes to the length of asserting that

the prime end of all governmental systems should be the cultivation in the people of a vigorous political vitality, a patriotic loyalty and social solidarity,¹

an end he says which is not attained by a bureaucratic system. Even Bluntschli, who tells us that "among civilized peoples, direct democracy is always a sham," admits that the mass of the people are elevated by participation in public affairs and are distinguished from those who are not permitted to share in the government by a richer and more conscious development of their faculties.⁸ It tends to create an active, intelligent and alert citizenship and thereby to promote a higher type of national character.⁹ This was one of the principal merits which de Toqueville saw in the democracy of the United States three-quarters of a century ago. The direct participation of the people in legislation, he affirmed, made them acquainted with the laws and instructed them in the art of government. The psychological influence of popular coöperation in government upon the electorate must also be counted as one of the considerations in its favor, since

aggravate it by their avidity for taking more and more power into their direct management, it is a fact which experience has placed beyond all dispute—The difficulties are so manifold and enormous that in large and complex modern societies it could neither last nor work if it were not aided by certain forces which are exclusively associated with it, but of which it greatly stimulates the energy." *Popular Government*, pp. 87, 98.

¹ *Comparative Administrative Law*, vol. 2. p. 10.

⁸ *Allgemeines Staatsrecht*, bk. 6, ch. xxi, Compare Burke's *Reflections on the French Revolution*.

⁹ This idea is emphasized by J. S. Mill in his *Representative Government*, ch. iii; "There is no difficulty in showing," says Mill, "that the ideally best form of government is that in which the sovereignty or supreme controlling power is vested in the entire aggregate of the community," p. 21. Direct participation in public affairs, he says, tends to create an "active" rather than a passive type of citizen, human beings rather than machines." Compare Laveleye, *le Gouvernement dans la Démocratie*, p. 273; "No man can be considered free in the political acceptance of the word who is not allowed to take some part in the government of his country." Speaking of the effect of the referendum upon party spirit, A. V. Dicey says: "It is difficult to exaggerate the immense benefit which in the long run accrues to a people from the habit of treating legislation as a matter to be determined not by the instincts of political partisanship, but by the weight of argument." *The Contemporary Review*, vol. 57, p. 508.

popularly enacted legislation is likely to have a moral force back of it which renders its enforcement less difficult. Furthermore, admission of the people to share in legislation tends to pacify the minority, reconcile dissatisfied elements and serve as a sort of specific for social diseases.¹⁰

But manifestly there is a point beyond which popular government produces an inefficiency which is out of all proportion to the resulting educational advantages to the electorate. When this point is reached the primary system must yield to the representative system. An electorate of average intelligence may very properly be given a veto upon legislative projects of a simple and purely local character, especially if such propositions involve the imposition of extraordinary pecuniary burdens, but it is quite another thing to permit every dissatisfied class in the state to formulate legislative projects which are complex in character and general in scope, compel a referendum on their schemes and have them put into force upon an affirmative vote of an electorate a large proportion of whom, from want of special knowledge are incapable of expressing an intelligent opinion upon the merits.¹¹

¹⁰ Compare on this point Common's *Proportional Representation*, p. 334.

¹¹ "To set to work every group and every interest" says Bradford, "which has a scheme to forward and with the proverbial ease with which signatures are obtained thrust this scheme upon the legislature, to rebound upon the mass of the people for settlement, seems like the evident work of a disordered imagination." *Lessons of Popular Government*, vol. 2, p. 201. Recently, some 50,000 votes were cast in Chicago against a proposition to convert the floating debt of the city into a bonded debt at a lower rate of interest, thus saving thousands of dollars annually to the city. In some instances, propositions of this sort have been defeated outright. An illustration of the queer workings of the referendum was afforded by Maryland in 1891. Two amendments to the constitution were submitted to the voters; one allowing the taxation of mortgage debts, the other altering a clause in the declaration of rights so as to permit a more equitable system of taxation. Apparently, the first proposition should have been rejected and the second adopted. But the result was the contrary, the first proposition being carried and the second rejected, the vote on the question of amendment in each case being about one-third the total vote cast for governor. Strangely enough, some counties were almost unanimous for one amendment and others almost unanimous against it. In some counties, four-fifths of the total vote was cast on one or the other proposal, while in others it was as low as one-sixteenth. The explanation given for the singular result was that the masses not understanding clearly the purport of the proposed amendments voted as the political bosses advised. In the democratic counties, the instructions were to vote a certain way, while in the republican counties, the leaders directed their followers to vote the other way. In some counties where the leaders had no pronounced opinions, one way or other but few votes were cast. Bradford, *Lessons of Popular Government*, p. 561.

Government by the masses in their primary capacity rests on the theory that all men are specialists in a great number of fields, that the mass of ignorant voters, amounting to tens of thousands in the large cities, many of them foreigners recently naturalized and having little or no permanent interest in the community, are as capable of pronouncing judgment upon untried legislative projects or administrative policies as are trained and experienced legislators and administrators, and that they can not be swayed by prejudices or misled by demagogues. The late Mr. Justice Fitz James Stephen expressed a truth which history has abundantly confirmed when he declared that

government really done well requires an immense amount of special knowledge and the steady, restrained, and calm exertion of a great variety of the highest talents which are to be found.¹²

An example of the failure of government by the people in their primary capacity is found in the management of the business affairs of the trades unions in England where an attempt was made to secure to every member a direct share in the conduct of the affairs of his association. The result of half a century's experience has been, so the historians of English trades unionism tell us, instability in legislation, dangerous unsoundness of finance, and general weakness of administration. The initiative was early abandoned and the referendum instead of being extended has been greatly limited in practice.¹³

A recent illustration of the futility of submitting to the people measures of an administrative character which require special knowledge such as is possessed by only a comparatively small portion of the population was afforded by the referendum in Illinois (November, 1906), on a proposition to empower the commissioners of the Illinois and Michigan Canal to sell certain lands belonging to the canal which were described in a certain joint resolution of a previous session of the legislature, the lands to be sold in accordance with the conditions set forth in the said resolution. The voters were left to find out as best they could where the lands were, why it was desired to sell them and what were the conditions of sale referred to in the joint resolution. Not one elector in ten was qualified to cast an intelligent vote on the proposition and it was too much to expect that they would go to the trouble of informing themselves of the merits of the measure through research or correspondence. They did the only natural

¹² *Liberty, Equality and Fraternity*, p. 245.

¹³ Sydney and Beatrice Webb, *Industrial Democracy*, chs. i and ii.

thing to be done under the circumstances, namely, abstain from voting on the proposition and accordingly, it was lost by default, though a large majority of those who voted on the measure voted in the affirmative.¹⁴ It is difficult to see what is to be gained either by way of popular education, public control, or administrative efficiency through the employment of the referendum on quasi technical questions of this character when the judgment of the voter is limited to a single yes or no and when there are no practical means of estimating the merits of the measures submitted. A somewhat careful examination of the results of the workings of the referendum both in Switzerland and in this country, shows that the vote cast on referendal propositions has been with rare exceptions, distressingly small, thus raising the question whether after all the masses of the people are really interested in the demand for a wider extension of the referendum and whether if granted, they would avail themselves generally of the privilege. The important constitutional amendment of 1891 establishing the initiative in Switzerland was adopted by a referendum in which less than half of the registered voters participated, and it not infrequently happens that on propositions submitted by the cantonal legislatures, the vote in some communes falls as low as 15 and even 10 per cent of the total. In the canton of Berne, of sixty-eight statutes which owe their existence to direct legislation, only eight were approved by a majority of the voters.¹⁵ In Zurich as many as 30 per cent of the ballots cast are often blank and most of the laws enacted through the referendum so far have been carried by a minority of the voters.¹⁶

¹⁴ Out of about 900,000 votes cast at the election, 596,000 votes were cast for and against the amendment, leaving 304,000 voters who abstained from recording their judgment on the merits of the proposition. As a result of long continued agitation in Illinois, an advisory vote on the question of amending the constitution so as to permit the employment of the initiative in legislation "thereby restoring to the people the power which they once had, but which they delegated to the general assembly by the constitution," was taken in 1902. About 50 per cent of the vote of the State was cast in favor of the proposition, but according to one observer, many of those who voted in favor of the proposition did not know what it meant and among them were many business and professional men; some thought they were voting for the referendum instead of the initiative; while thousands of laboring men voted in the affirmative not because of any opinion which they entertained regarding the merits of the initiative, but because the word had been passed around from the "union" to vote for the proposition. Brown, *The Initiative in the American Journal of Sociology*, May, 1905.

¹⁵ Arthur S. Hardy, *The Independent*, June 13, 1907, p. 1408.

¹⁶ E. V. Reynolds, *Yale Review*, vol. 4, p. 290.

It is ridiculous, says Deploige, a native student of the referendum in Switzerland, to talk of legislation by the people when more than half of the citizens refuse to exercise their legislative rights.

American experience with the referendum has in general shown the same indifference and apathy. Only in exceptional cases have constitutional or legislative proposals called out a vote equal to 50 per cent of the total and in most cases it has been less. Owing to the common requirement that proposed constitutional amendments shall, in order to be valid, receive a majority of the votes cast at the election at which the amendment is submitted, it has proved impossible to bring about needed constitutional changes in many of the States. To mention a few examples, by way of illustration, an important amendment to the constitution of Illinois, the need of which scarcely any one denied, was defeated in 1896 because only about one-fifth of those who voted for presidential electors cast a vote on the question of amendment.¹⁷ In November, 1906, a proposed amendment was submitted to the voters of Kansas and only 60,000 votes were cast on the proposition though more than 300,000 votes were polled by the head of the State ticket. Practically all attempts to amend the constitution of Indiana have resulted in failures on account of the indifference of the voters. In November, 1906, a much needed amendment to which there was little opposition, was submitted to the voters of that State and it had the singular fate of being voted on by only one-twelfth of the voters who went to the polls.¹⁸ Where a majority of those voting on the proposition to amend is sufficient to adopt, it sometimes happens that amendments are carried by a small minority of voters. This happened in Louisiana in November, 1906, where several important amendments were adopted by a vote of one-sixth of the electorate.

Experience with the referendum on State statutes and municipal questions shows less indifference on the part of the voters, but with rare exceptions, the abstentions are more numerous than the votes cast, so that the results often represent the opinions of the minority rather than of the majority.¹⁹

¹⁷ The total vote cast at the election was 1,090,869; the vote on the question of amendment for and against was 239,576.

¹⁸ The total vote cast was 600,000; on the question of amendment 51,000.

¹⁹ Recently in Buffalo only 9641 votes were cast on a proposition looking toward the establishment of a municipal lighting plant. In Boston in 1894, the popular vote on the rapid transit question was less than one-third of the total vote cast

Of all municipalities in the country, Chicago has had perhaps the most satisfactory experience with the referendum and the results there have been such as to encourage the belief that direct legislation within proper restrictions may be practicable under modern urban conditions. During the last five years, the electors of that city have been called upon to pass judgment on not less than fifteen propositions of State or municipal policy and in almost every case, an intelligent use has been made of their power. Furthermore, what is remarkable when compared with the experience of other cities, the proportion of votes cast on the various questions submitted aggregated in most cases about two-thirds of the total vote cast at the election and in a few instances, the proportion was considerably larger, thus showing an absence of that popular indifference which in so many other places has led to a practical breakdown of the referendum. But for the most part, the questions upon which the referendum was taken related to municipal policies in which all classes of the people felt a deep personal interest, and since the vote in each case was preceded by a campaign of education by the advocates and opponents of the various measures submitted, it was not unnatural that large votes should have been polled. But where propositions were submitted which were semi-technical in character, which had a general rather than a local interest, and which were not elucidated by public debate and discussion, such for example, as the proposition to enable the commissioners of the Illinois and Michigan Canal to sell certain lands, popular interest was slight and the propositions were defeated by default rather than by opposition. We may conclude, therefore, that a limited use of the referendum may be desirable in the interest of popular control and political education, but rarely for administrative efficiency. If applied to simple questions of public policy of a purely local character in which the masses of voters have a personal interest such as they have in the choice of public officers, the referendum may subserve a useful purpose both by way of restraint upon the government and by way of popular education and stimulation of interest in public affairs. But in general application to large districts and to general questions of legislative policy or to quasi technical questions of an administrative character, the referendum has no

and the question was finally settled by less than one-sixth of the electorate. Within the last few weeks, the question of introducing the commission plan of government in Wichita, Kansas, was settled by a referendum in which only 4500 voters out of a registered electorate of about 13,000 persons took part.

place and can only lead to results which are worthless if not mischievous.

On the whole, experience with the initiative and referendum shows that their use, particularly for the determination of questions of administrative policy, should be restricted rather than extended. The growing disposition to take a referendum on every question of public policy upon which there may be a difference of opinion, strikes at the root of efficient business-like administration. The practice of taking a referendum on several questions at the same time at which an election of officers is held greatly complicates the election, confuses issues of policy with personal issues and leads to results which do not represent the popular will.²⁰ This is the testimony of the election commissioners of Chicago where this practice has caused considerable dissatisfaction. To provide separate elections, however, in order to simplify matters and permit independent judgments on the measures submitted would, of course add greatly to the expense of holding elections in addition to the loss of time and the demoralization incident to an election. In most States there are already too many elections (Illinois is a notable example) and any proposition which contemplates an addition to the list is subject to serious objection whatever may be its merits in other respects.²¹ It is not at all unlikely that we shall soon witness a reaction against the present clamor for more direct government by the masses. The idea of the right of everybody to take part in public affairs by proposing laws for the good of the country has an attractive ring to it, but in practice, says Professor Lowell, it has not proved of value.²² The same judgment must be expressed with regard to the use of the referendum, except where it is employed in accordance with the restrictions and conditions indicated above. The representative system, with all its faults, will sooner

²⁰ At a recent election in Portland, Oregon, twenty-one propositions were submitted to the voters. The results illustrate the dangers of popular legislation. A gas franchise for twenty-five years was approved in spite of the opposition of the best informed students while propositions for moderate increases of compensation for certain city officials were voted down.

²¹ The supreme court of Delaware speaking of the referendum said: "The frequent and unnecessary recurrence of popular elections, always demoralizing in their effects, are among the evils that can befall a republican government; and the legislation dependent upon them must be as variable as the passions of the multitude, *Rice v. Foster*, 4 Harr, 479.

²² The Referendum and Initiative, *International Journal of Ethics*, vol. 6, p. 55.

or later come to be better appreciated as the glaring defects of direct legislation become more manifest. If there be one principle clearer than another, says Woodrow Wilson, it is this: that in business, whether of government or of mere merchandise, somebody must be trusted. Power and strict accountability are the essential constituents of good government.²³ Jefferson, whom the friends of the initiative and referendum never cease to quote in support of their schemes, saw that government was practicable only when carried on by a comparatively few men. There is a natural aristocracy, he said, founded on talent and virtue which seems destined to govern societies; and of all forms the best is that which provides for the introduction of this class into the government.²⁴ Lecky in his *Democracy and Liberty* has pointed out the dangers of government by those whom he calls the

"poorest, the most ignorant, the most incapable who are necessarily the most numerous." Such an idea, he says, "reverses all the past experience of mankind." "In every field of human enterprise," he continues, "in all the competitions of life, by the inexorable law of nature, superiority lies with the few and not with the many, and success can be obtained by placing the guiding and controlling power mainly in their hands."

²³ *Congressional Government*.

²⁴ Quoted by Signorel, *Étude de législation comparée sur le Referendum Législatif*, p. 22. Signorel concludes after an elaborate study of the working of the referendum in Switzerland that it is not practicable, that it has proved an obstacle in the way of good legislation and has been responsible for much unwise legislation. He declares that the people are unfitted to legislate themselves and if permitted on a large scale, it will lead to tyranny and the ruin of liberty, p. 458.